liability. As a matter of fact, however, did not the general authorization to carry on mining operations in the United States and to purchase machinery for that purpose confer authority to purchase the machinery in California? If so, then it would seem, that unless both parties contracted with reference to some other laws, the *lex loci contractus* should determine the nature and extent of the obligation of the shareholders as well as that of the corporation.[6] The *ratio decidendi* of the principal case to the effect the authority to carry on business in California was the dominant order and "when the defendant authorized that he could not avoid the consequences by saying that he did not foresee, or intend, or that he forbade them" would seem to apply to the Risdon case. Of course, the English Court might have admitted the applicability of the California law in the first instance and still refused to enforce the personal liability of the stockholders on the ground that it considered the California statute as penal in its nature or as opposed to the public policy of England.

Some textbooks[7] declare the rule to be that the only liability enforceable against a stockholder is that imposed by the law of the place of incorporation. As has been ably pointed out,[8] however, a careful examination of the cases cited in support of this proposition will show that in most of them the place of incorporation and contracting the debt were the same, or were assumed to be the same, so that there was no conflict between the law of the place of incorporation and that of contracting. The only question necessarily involved was whether the law of the place of incorporation *and* contracting should be enforced in the courts of the domicile of the stockholder. In the few cases in which the precise point under discussion has arisen, the courts have been unusually careful to confine their remarks to the particular cases before them, so that on adjudicated cases, no general rule can be considered to be established. On principle, it would seem that the personal liability imposed by the California statute should be enforced in all jurisdictions as to contracts actually made and authorized to be made by foreign corporations in California, unless the courts of the forum can bona fide consider the liability as penal or as opposed to the public policy of their state.

T. J. L.

CONSTITUTIONAL LAW: FEDERAL AGENCIES: TAXATION OF BONDS OF TERRITORIAL MUNICIPALITIES:—A novel question has just been decided by the Supreme Court of the United States in the

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[6] "What Law Governs the Validity of a Contract", Professor Joseph H. Beale, 23 Harvard Law Review, 1-12, 79-103, 194-208, 261-272.

[7] Morawetz, Private Corporations, 2nd ed. sec. 854 and cases cited; Cook on Corporations, 6th ed. sec. 223, p. 584.

[8] "The Individual Liability of Stockholders and the Conflict of Laws", Professor W. N. Hohfeld 10 Columbia Law Review p. 294, note 24.

case of *Farmers & Merchants Savings Bank* v. *Minnesota*.[1] That the States may not tax agencies of the general government has been established in a consistent line of decisions, beginning with the case of McCulloch v. Maryland.[2] The application of this general rule is dependent upon the effect of the tax, namely, whether the tax hinders the agents in the efficient exercise of their power. Therefore, a tax on their property has no such necessary effect, while a tax upon their operations is regarded as a direct obstruction to the exercise of federal powers.[3]

Conversely, the federal government may not tax the agencies of a State.[4] Such exemption is, however, limited to those agencies of the state which are of a strictly governmental character; where a State engages in business of a private nature, there is no exemption from federal taxation.[5] Hence, in so far as municipalities are agencies of the State, it is held that the United States may not make them the object of its taxation.[6] Consequently bonds issued by a State or one of its municipalities are not taxable by the federal government, and the income provisions of the tariff act of 1894 were held to be unconstitutional in that they imposed a tax upon the income derived from municipal bonds.[7]

Now, the question before the court in the principal case was whether Minnesota might tax, in the hands of its residents, bonds issued by municipalities in Indian Territory and Oklahoma Territory after the admission of Oklahoma into the Union. This question involved two elements, (1) whether the bonds of territorial municipalities were exempt from taxation by the States, and (2) if they were exempt, whether the admission of the territory into the Union as a State operated to do away with such exemption. Upon both these points, the case is one without direct precedent. The State Court had held that the bonds were taxable, on the ground that territorial municipalities were not such federal agencies as came under the rule of McCulloch v. Maryland, and that even if they were, the new State, by its assumption of the obligation had destroyed the exemption.[8] But the United States Supreme Court declared that the "Territory of Oklahoma was an instrumentality established by Congress for the government of the people within its borders, with authority to subdelegate the governmental power to the several municipal corporations therein. These corporations were established for public and governmental purposes only, and

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[1] (Feb. 24, 1914) 232 U. S. 516, 34 Sup. Ct. Rep. 354.
[2] (1819) 4 Wheat. 316.
[3] Union Pacific R. R. Co. v. Peniston, (1873) 18 Wall. 5.
[4] Collector v. Day, (1870) 11 Wall. 13; Ambrosini v. United States, (1902) 187 U. S. 1.
[5] South Carolina v. United States, (1905) 199 U. S. 437.
[6] United States v. Baltimore & Ohio R. R. Co. (1872) 17 Wall. 322.
[7] Pollock v. Farmers' Loan & Trust Co., (1894) 157 U. S. 429.
[8] State v. Farmers' Loan & Trust Co., (1911) 114 Minn. 95, 130 N. W. 445.

exercised their powers and performed their functions as agents of the central government." The issuing of municipal bonds was held to be a governmental function, and such bonds to be exempt from taxation by the States. As to the contention that the situation was changed by the admission of Oklahoma as a State, the Court said: "Presumably the municipal credit was enhanced and the terms of the municipal borrowing rendered more favorable by the understanding that the bonds, being obligations of an agency of the Federal Government, would be exempt from taxation by the several States. To deprive bonds (of territorial municipalities) of their immunity from state taxation, and this because of the subsequent action of Congress in erecting the territories into a State, with or without an assumption by the new State of the obligations of the federal agency, would be in effect to impair the obligation of the contract: and this is so inconsistent with the honor and dignity of the United States that such an intent should not be presumed without the clearest language requiring it."

W. C. J.

CONSTITUTIONAL LAW: LIMITATION OF THE FOURTEENTH AMENDMENT ON THE EMINENT DOMAIN POWER OF THE STATES.—It is well settled that, under the due process clause of the Fourteenth Amendment, private property can be taken under the power of eminent domain for a public purpose only.[1] And the exercise of the power of eminent domain has usually been limited to takings for a public service enterprise which serves the public so directly that it would be subject to such incidents as public supervision and regulation of rates. But in a recent case, *State ex rel. Mountain Timber Co.* v. *Superior Court*,[2] the doctrine was extended to authorize a taking by a private individual, for his own exclusive private use in an enterprise which could be said to serve the public only in that it was engaged in developing the natural resources of the state.

The Constitution of Washington provides[3] that "private property shall not be taken for private use, except for prviate ways of necessity" etc. By the statutes of Washington[4] land may be condemned by any person for a private way of necessity for the transportation of timber etc. after due notice and hearing and the payment of a just compensation. The Mountain Timber Company, a private corporation was allowed to condemn a private right of way across private land for the purpose of constructing an outlet for a part of its timber lands, otherwise inaccessible. The ground of the decision was that the benefit to accrue to the public in the development of the timber resources of the state was of such importance in

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[1] Fallbrook Irr. Dist. v. Bradley, (1896) 164 U. S. 112, 158; Lewis, Eminent Domain, (3d ed.) sec. 315.

[2] (1914) 137 Pac. 994.

[3] Art. I, sec. 6.

[4] Laws, 1913, p. 412.